

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Ringwood Mines/Landfill Superfund Site  
Borough of Ringwood, Passaic County,  
New Jersey

and

Ford Motor Company,

Respondent

**ADMINISTRATIVE ORDER ON  
CONSENT FOR REMEDIAL DESIGN**

U.S. EPA Region 2  
CERCLA Docket No. 02-2014-2025

Proceeding under Sections 104, 106, 107,  
and 122 of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act of 1980, as amended, 42  
U.S.C. §§ 9604, 9606, 9607, and 9622.



## **TABLE OF CONTENTS**

I. JURISDICTION AND GENERAL PROVISIONS	1
II. PARTIES BOUND	1
III. DEFINITIONS	2
IV. FINDINGS OF FACT	4
V. CONCLUSIONS OF LAW AND DETERMINATIONS	7
VI. ORDER	8
VII. DESIGNATED PROJECT MANAGER AND COORDINATORS	8
VIII. WORK TO BE PERFORMED	8
IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS	11
X. REPORTING	13
XI. SITE ACCESS	13
XII. ACCESS TO INFORMATION	14
XIII. RECORD RETENTION	15
XIV. COMPLIANCE WITH OTHER LAWS	16
XV. PAYMENT OF RESPONSE COSTS	16
XVI. DISPUTE RESOLUTION	19
XVII. FORCE MAJEURE	20
XVIII. STIPULATED PENALTIES	21
XIX. COVENANT NOT TO SUE BY EPA	24
XX. RESERVATION OF RIGHTS BY EPA	25
XXI. COVENANT NOT TO SUE BY RESPONDENT	26
XXII. OTHER CLAIMS	27
XXIII. CONTRIBUTION PROTECTION	27
XXIV. INDEMNIFICATION	28
XXV. INSURANCE	28
XXVI. FINANCIAL ASSURANCE	29
XXVII. INTEGRATION/APPENDICES	30
XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION	31
XXIX. NOTICE OF COMPLETION OF WORK	31



## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Order on Consent (“Order”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and Ford Motor Company (“Respondent”). This Order provides that Respondent shall undertake a Remedial Design (“RD”), including various procedures and technical analyses, to produce a detailed set of plans and specifications for implementation of the Remedial Action selected in the June 30, 2014 Record of Decision EPA issued for Operable Unit 2 of the Ringwood Mines/Landfill Superfund Site (“Site”), located in the Borough of Ringwood, Passaic County, New Jersey. In addition, Respondent shall reimburse the United States for certain response costs that it incurs, as provided herein.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, 42 U.S.C. §§ 9604, 9606, 9607, and 9622. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further delegated on November 23, 2004, by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division by EPA Region 2 Delegation Nos. 14-14-C and 14-14-D.

3. EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of fact, conclusions of law, and determinations in this Order. Respondent agrees to comply with, and be bound by, the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms.

4. The objectives of EPA and Respondent in entering into this Order are to protect public health or welfare or the environment at the Site by the design of response actions at the Site by Respondent, to reimburse response costs of EPA, and to resolve the claims of EPA against Respondent as provided in this Order.

## **II. PARTIES BOUND**

5. This Order applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent’s responsibilities under this Order. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

### **III. DEFINITIONS**

7. Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order, in the documents attached to this Order, or incorporated by reference into this Order, the following definitions shall apply:

- a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. “Day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, this period shall run until the close of business of the next working day.
- c. “Effective Date” shall be the effective date of this Order as provided in Section XXVIII (Effective Date and Subsequent Modification).
- d. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- e. “NJDEP” shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.
- f. “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 56 (costs and attorney’s fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 91 (Work Takeover).”
- g. “Institutional controls” shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well-drilling prohibitions.
- h. “Interest” shall mean interest at the rate specified for interest on investments of

the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with CERCLA § 107(a), 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

- i. “Municipal solid waste” shall mean waste material: (i) generated by a household (including a single or multifamily residence); or (ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material – (I) is essentially the same as waste normally generated by a household; (II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.
- j. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, et seq., including any amendments thereto.
- k. “Operable Unit 2 Record of Decision” or “OU2 ROD” shall mean the EPA Record of Decision relating to Operable Unit 2 at the Site, and all attachments thereto that the Regional Administrator, EPA Region 2, or her delegate, signed on June 30 , 2014.
- l. “Order” or “Consent Order” shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.
- m. “Paragraph” shall mean a portion of this Order identified by an Arabic numeral.
- n. “Parties” shall mean EPA and Respondent.
- o. “Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the Remedial Action Objectives Section of the OU2 ROD and Section II of the SOW.
- p. “Remedial Design” or “RD” shall mean those activities that Respondent shall undertake to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.
- q. “Remedial Design Work Plan” shall mean the document developed pursuant to SOW and this Order and approved by EPA, and any amendments thereto.

- r. “Section” shall mean a portion of this Order identified by a Roman numeral and includes one or more paragraphs.
- s. “Site” shall mean the Ringwood Mines/Landfill Superfund Site, encompassing approximately 455 acres, located in the Borough of Ringwood, Passaic County, New Jersey and as depicted generally on Appendix C.
- t. “State” shall mean the State of New Jersey.
- u. “Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, and any modifications made thereto in accordance with this Order, as set forth in Appendix A of this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.
- v. “Waste Material” shall mean: 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or “RCRA”), 42 U.S.C. § 6903(27).
- w. “Work” shall mean all activities Respondent is required to perform under this Order except those required by Section XIII (Record Retention).

#### **IV. FINDINGS OF FACT**

8. The Site includes an inactive municipal landfill, abandoned mine shafts, filled mine pits, an industrial refuse disposal area, small surficial dumps, a municipal recycling center, residential properties and a rugged, forested area within the Ringwood State Park. The Site lies within the watershed of the Wanaque Reservoir, which supplies drinking water to much of northern New Jersey. The residents in the immediate area of the Site receive their water from municipal wells which are unaffected by the Site.

9. In 1965, the Ringwood Realty Corporation (“RRC”), a subsidiary of the Ford Motor Company (“Ford”), purchased over 800 acres within the Borough of Ringwood, including the acreage which now makes up the Site. Shortly thereafter RRC removed substantial numbers of junked cars and other Waste Materials from the Site, closed numerous mine shafts and filled some mine pits at the Site in response to a request by the Borough.

10. In late 1967, RRC entered into an agreement with O’Connor Trucking and Haulage Corporation (“O’Connor”) to dispose of Waste Materials from Ford’s Mahwah automobile assembly plant (“Mahwah”). From late 1967 to mid-1971, RRC authorized O’Connor to dispose of Waste Material from Ford Mahwah at the Site. Contracts between RRC and O’Connor called for the disposal of cardboard and other packing materials from Ford Mahwah, scrap car parts,



paint sludge and scrap and dented drums containing “obsolete hardened production sealing and insulating stock of nonflammable nature.” Ford claims that State and local officials approved O’Connor’s disposal activities at the Site.

11. Beginning in 1969, RRC began selling or donating portions of its acreage. In 1970, RRC transferred 289.9 acres of the Site to the Ringwood Solid Waste Management Authority ("RSWMA"), an entity created by the Borough of Ringwood. RSWMA allowed O'Connor to continue to dispose of Waste Material at the Site; RSWMA also operated municipal landfills at the Site. From November 1970 through approximately 1976, the RSWMA disposed and/or allowed others to dispose municipal waste from the Borough of Ringwood and the Town of West Milford at the Site. Prior to and since RRC’s ownership, persons who are not connected to Respondent has conducted unpermitted and unauthorized disposal of Waste Materials unrelated to Ford’s Mahwah plant at certain portions of the Site.

12. The Site was listed on the National Priorities List (“NPL”) in 1983.

13. From 1984 through 1988, Ford performed a remedial investigation (“RI”), completed a feasibility study (“FS”) for the Site and removed over 7000 cubic yards of paint sludge and associated soil from the Site. As part of this removal, pockets of paint sludge were removed from the northern portion of the Site near the Peters Mine Pit and the O’Connor Disposal Areas, and from an area near the Cannon Mine Pit.

14. The primary contaminants of concern (“COCs”) at the Site are lead and arsenic. Lead and arsenic have been found at elevated levels in paint sludge found at the Site. Levels of arsenic above New Jersey background soil levels have been found in some samples of mine tailings collected from the Site.

15. In September 1988, EPA issued a Record of Decision (“1988 ROD”) which selected long-term monitoring of groundwater and surface water as the remedy for the Site. The 1988 ROD noted that the known areas of paint sludge had been removed from the Site.

16. In 1994, the Site was deleted from the NPL. This decision to delete the Site from the NPL was supported by the determination that groundwater at the Site did not pose an unacceptable threat to human health and the environment.

17. In 1995, and again in 1998, additional paint sludge was located at the Site, prompting several additional removal actions by Ford.

18. Due to the presence of newly discovered paint sludge, the Site was restored to the NPL in September 2006.

19. In May 2010, Ford entered an Administrative Order on Consent with EPA to perform feasibility studies for the Peters Mine Pit, Cannon Mine Pit and O’Connor Disposal Areas of the

Site, as well as Site-Related Groundwater Contamination. The Borough of Ringwood declined to enter that Order and was subsequently issued a Unilateral Administrative Order by EPA mandating that it participate and cooperate with Ford in performing the work to be done under the Order.

20. Final RI and FS Reports for the Peters Mine Pit, Cannon Mine Pit and the O'Connor Disposal Areas were submitted to EPA in 2012 and 2013.

21. The following four Areas of Concern were used to assess conditions at the Site and select response actions needed to address those conditions:

- Peters Mine Pit Area – includes waste, fill material and soil located in and immediately adjacent to the former Peters Mine Pit;
- Cannon Mine Pit Area – includes waste, fill material and soil located in and immediately adjacent to the former Cannon Mine Pit;
- O'Connor Disposal Area – includes waste, fill material and soil located in and immediately adjacent to the former mine tailing disposal area; and
- Site-Related Groundwater Contamination - includes any groundwater contamination resulting from disposal activities at the Site.

22. EPA also decided to structure the response actions in two additional operable units: OU2, which is the subject of this administrative order, will address remediation of waste, fill material and soil located in the Peters Mine Pit, Cannon Mine Pit and the O'Connor Disposal Areas; OU3 will address any groundwater contamination found at the Site.

23. On June 30, 2014, EPA issued the OU2 Record of Decision for the Site.

24. The remedy selected in the OU2 ROD requires that the following Alternatives be implemented at the Site:

- a. Alternative 6A (Removal and Off-Site Disposal of Historic Fill Surrounding Peters Mine Pit, Fill Peters Mine Pit and Permeable Engineered Cap of Peters Mine Pit with Engineering and Institutional Controls, Peters Mine Pit Pond would not Remain) as the remedy for the Peters Mine Pit Area of the Site;
- b. Alternative 3A (Permeable Engineering Cap of Cannon Mine Pit Area) as the remedy for the Cannon Mine Pit Area of the Site, and;
- c. Alternative 5A (Removal of Fill for Off-Site Disposal with On-Site Reuse of Mine Tailings) as the remedy for the O'Connor Disposal Area of the Site.

25. The Borough of Ringwood, which owns the land which comprises the O'Connor Disposal Area, has informed EPA that it wishes to construct a new Borough recycling center at the O'Connor Disposal Area. The OU2 ROD recognizes this potential use of the O'Connor Disposal Area and it identifies a contingency remedy (Alternative 4A) which would accommodate the Borough's plan to use the O'Connor Disposal Area as the location for a new

Borough recycling center. However, as stated in the OU2 ROD, this contingency remedy would only be implemented, if: (a) the Borough provides the following to EPA within six months of the date of this OU2 ROD: (1) detailed engineering plans for the new recycling center; (2) financial assurance that funds are available for the construction of the recycling center; and (3) documentation that the construction of the contingency remedy including the recycling center can be completed in a time-frame that is similar to or shorter than the selected remedy; and (b) EPA determines that what the Borough has submitted to EPA in accord with (a)(1) through (a)(3), above, is sufficient to allow the contingency remedy to be implemented and notifies the Borough in writing to that effect.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, as well as the Administrative Record supporting this Order, EPA has determined that:

26. The Ringwood Mines/Landfill Superfund Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

27. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

28. Respondent is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

29. Respondent is a responsible party as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). Respondent is jointly and severally liable for performance of response action under the Order and for response costs incurred, and to be incurred, at the Site.

- a. The Borough of Ringwood is the “owner” and/or “operator” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- b. Ford Motor Company and the Borough of Ringwood were each an “owner” and/or “operator” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
- c. Both Ford Motor Company and the Ringwood Solid Waste Management Authority arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

30. The conditions described in the Findings of Fact above, constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

## **VI. ORDER**

31. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

## **VII. DESIGNATED PROJECT MANAGER AND COORDINATORS**

32. Respondent shall retain a Supervising Contractor to perform the Work and shall notify EPA of the name and qualifications of such contractor in accordance with the requirements and timeframe specified in the SOW.

33. Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order in accordance with the requirements and timeframe specified in the SOW.

34. EPA has designated Joseph Gowers of the Emergency and Remedial Response Division, Region 2, as its Remedial Project Manager (“RPM”). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the RPM at 290 Broadway, New York, New York 10007.

35. EPA’s RPM shall have the authority, consistent with the NCP, to halt any Work required by this Order and to take any necessary response action when the RPM determines that conditions at the Site may present an immediate endangerment to public health, welfare, or the environment. The absence of the EPA RPM from the area under study pursuant to this Order shall not be cause for the stoppage or delay of Work.

36. Respondent shall have the right, subject to Paragraph 33, to change their respective designated Project Coordinators. Respondent shall notify EPA 14 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

## **VIII. WORK TO BE PERFORMED**

37. Respondent shall perform all actions necessary to implement the Statement of Work.

38. Respondent shall conduct all work in accordance with the SOW, the OU2 ROD, CERCLA, the NCP, and all applicable EPA guidance. The RPM shall use his or her best efforts to inform Respondent if new or revised guidances may apply to the Work.

39. Respondent shall perform the tasks and submit the deliverables that the SOW sets forth. EPA will approve, approve with conditions, modify, or disapprove each deliverable that Respondent submits under this Order and the SOW, pursuant to Section IX (EPA Approval of Plans and Other Submissions). Each deliverable must include all listed items as well as items that the RD Work Plan indicates Respondent shall prepare and submit to EPA for review and approval.

40. Upon EPA's approval, this Order incorporates any reports, plans, specifications, schedules, and attachments that this Order or the SOW requires. With the exception of extensions that EPA allows in writing or certain provisions within Section XVII of this Order (*Force Majeure*), any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Order and will subject Respondent to any applicable stipulated penalties in accordance with Section XVIII of this Order (Stipulated Penalties).

41. If any unanticipated or changed circumstances exist at the Site that may significantly affect the Work or schedule, Respondent shall notify the EPA RPM by telephone within 48 hours of discovery of such circumstances. Such notification is in addition to any notification required by Section XVII (*Force Majeure*).

42. If EPA determines that additional tasks, including, but not limited to, additional investigatory work or engineering evaluation, are necessary to complete the Work, EPA shall notify Respondent in writing. Respondent shall submit a workplan to EPA for the completion of such additional tasks within 30 days of receipt of such notice, or such longer time as EPA agrees. The workplan shall be completed in accordance with the same standards, specifications, and requirements of other deliverables pursuant to this Order. EPA will review and comment on, as well as approve, approve with conditions, modify, or disapprove the workplan pursuant to Section IX (EPA Approval of Plans and Other Submissions). Upon approval or approval with modifications of the workplan, Respondent shall implement the additional work in accordance with the schedule of the approved workplan. Failure to comply with this Subsection, including, but not limited to, failure to submit a satisfactory workplan, shall subject Respondent to any applicable stipulated penalties as set forth in Section XVIII (Stipulated Penalties). Respondent shall confirm its willingness to perform the additional Work in writing to EPA within 7 days of receipt of the EPA request. If Respondent objects to performing the additional tasks determined by EPA to be necessary pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution). The SOW and/or RD Work Plan shall be modified in accordance with the final resolution of the dispute.

43. Quality Assurance and Sampling.

- a. All sampling and analyses performed pursuant to this Order shall conform to the Quality Assurance Project Plan prepared and approved by EPA in accordance with the SOW.
- b. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 28 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.
- c. If, at any time during the Remedial Design process, Respondent becomes aware of the need for additional data beyond the scope of the approved Work Plans, Respondent shall have an affirmative obligation to submit to EPA's RPM, within 20 days, a memorandum documenting the need for additional data.

44. Community Relations Plan EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. As requested by EPA, Respondent shall provide information supporting EPA's community relations plan and shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA to explain activities at, or concerning, the Site.

45. Emergency Response and Notification of Releases.

- a. In the event of any action or occurrence during performance of the Work, which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release and shall immediately notify the EPA RPM, or, in the event of his/her unavailability, the On Scene Coordinator ("OSC"), or the Chief of the New York Remediation Branch at (212) 637-4288, and the 24-hour EPA Superfund/Oil Emergency Hotline at (877) 251-4575 of the incident or Site conditions. Respondent shall take such actions in consultation with EPA's RPM, or other available authorized EPA officer, and in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP, pursuant to Section XV (Payment of Response Costs).

- b. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken, or to be taken, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

## **IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

46. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Order, in a notice to Respondent, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modifies the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 21 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

47. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 46(a), (b), (c), or (e), Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 46(c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVIII (Stipulated Penalties).

48. Resubmission.

- a. Upon receipt of a notice of disapproval, Respondent shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVIII, shall accrue during the 21-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 49 and 50.

- b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed

to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).

c. Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition, or modification of the RD Work Plan. While awaiting EPA approval, approval on condition, or modification of this deliverable, Respondent shall proceed with all other tasks and activities that may be conducted independently of this deliverable, in accordance with the schedule set forth under this Order.

d. For all remaining deliverables not listed above in Subparagraph 48(c), Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point.

49. If EPA disapproves a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report, or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVI (Dispute Resolution).

50. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately, unless Respondent invokes the dispute resolution procedures in accordance with Section XVI (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVI, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVIII.

51. In the event that EPA takes over some of the tasks, Respondent shall incorporate and integrate information supplied by EPA into the final reports.

52. All plans, reports, and other deliverables submitted to EPA under this Order shall, upon approval or modification by EPA, be incorporated into and enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to



EPA under this Order, the approved or modified portion shall be incorporated into and become enforceable under this Order.

## **X. REPORTING**

### **53. Reporting.**

- a. Respondent shall submit written monthly progress reports to EPA concerning actions undertaken pursuant to this Order in accordance with the requirements and timeframes in the SOW.
- b. Respondent shall submit 4 copies of all plans, reports, or other submissions required by the Statement of Work, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order by certified mail, return receipt requested, or by UPS or Federal express, to the RPM at:

Joseph Gowers  
Remedial Project Manager  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 19th Floor  
New York, New York 10007-1866

54. Final Report. Within 60 days after completion of all Work required by this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall include the following certification signed by a person who supervised or directed the preparation of that report:

To the best of my knowledge, after thorough investigation, I certify that the information contained in, or accompanying, this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

## **XI. SITE ACCESS**

55. If Respondent owns or controls the Site, or any other property where access is needed to implement this Order, Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, to conduct any activity related to this Order. If Respondent who owns or controls property at the Site, it shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order

and written notice to EPA of the proposed conveyance, including the name and address of the transferee. If Respondent owns or controls property at the Site, Respondent also agree to require that its successors comply with the immediately preceding sentence, this Section, and Section XII (Access to Information).

56. Where any action under this Order is to be performed in areas owned by, or in possession of, someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 60 days after the Effective Date, or as otherwise specified in writing by the Project Coordinator. Respondent shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

57. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

58. If Respondent cannot obtain access agreements, EPA may obtain access for Respondent, perform those tasks or activities with EPA contractors, or terminate the Order. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that site and shall reimburse EPA for all costs incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

## **XII. ACCESS TO INFORMATION**

59. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

60. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. §

2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Order for which Respondent asserts business confidentiality claims.

61. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of each addressee and recipient; e) a general description of the contents of the document, record, or information; and f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

62. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at, or around, the Site.

### **XIII. RECORD RETENTION**

63. During the pendency of this Order and until 10 years after the Respondent's receipt of EPA's notification that work has been completed, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after notification that work has been completed, Respondent shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the Work.

64. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such documents, records, or other information and, upon request by EPA, Respondent shall deliver any such documents, records, or other information to EPA. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: a) the title of the document, record, or other information; b) the date of the document, record, or other

information; c) the name and title of the author of the document, record, or other information; d) the name and title of each addressee and recipient; e) a general description of the subject of the document, record, or other information; and f) the privilege asserted by Respondent. However, no documents, records, or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

65. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### **XIV. COMPLIANCE WITH OTHER LAWS**

66. Respondent shall undertake all action that this Order requires in accordance with the requirements of all applicable local, state, and federal laws and regulations, unless an exemption from such requirements is specifically provided by law or in this Order. The activities conducted pursuant to this Order, if approved by EPA, shall be considered consistent with the NCP.

67. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

68. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

#### **XV. PAYMENT OF RESPONSE COSTS**

69. Payment for Future Response Costs:

- a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, but at least one year after the Effective Date, EPA will send Respondent a bill requiring payment that includes a SCORPIOS Report. Respondent shall make all payments within 60 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 71 and Section XVI (Dispute Resolution).
- b. Respondent shall make all payments via check or electronic funds transfer (“EFT”) accompanied by the following information.

For payment by EFT:

- i. EFT to be directed to: **Federal Reserve Bank of New York**
- ii. Bank routing number: **021030004**
- iii. Bank account number receiving payment: **68010727**
- iv. SWIFT address: **FRNYUS33**
- v. Address: **Federal Reserve Bank of New York**  
**33 Liberty Street**  
**New York, NY 10045**
- vi. Field tag 4200 of Fedwire message to read (for Fedwire payments):  
**D 68010727 Environmental Protection Agency**
- vii. Case number: **II-CERCLA-2014-2025**
- viii. Amount of payment: \$
- ix. Name of remitter:
- x. Site name: Ringwood Mines/Landfill Superfund Site (OU2 of the Ringwood Mines/Landfill Superfund Site)
- xi. Site/Spill identifier: **02-62**

For Payment by check:

To make a payment to EPA by mail, send a check to the address below. Please note these are the instructions specifically for domestic checks.

**Address format for U.S. Postal Service:**

U.S. Environmental Protection Agency  
P.O. Box 979076  
St. Louis, MO 63197-9000

**Address format for common carriers (Fed Ex, DHL, UPS):**

U.S. Environmental Protection Agency  
Government Lockbox 979067  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

To ensure proper credit please include the following information on your payment:

- Company/remitter's name (as it appears on EPA document)
- Complete address, including city, state, zip
- Remitter's point of contact person and phone number

- EPA document number (contract, grant, purchase order, etc.)—NOT the remitter's number
- EPA contact name and phone number, if available
- Reason for payment

c. At the time of payment, Respondent shall send notice that such payment has been made to:

Ringwood Mines/Landfill Site Remedial Project Manager  
Emergency & Remedial Response Division  
U.S. Environmental Protection Agency  
290 Broadway - 19<sup>th</sup> Floor  
New York, New York 10007

and

Ringwood Mines/Landfill Site Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007  
Email: [cardielli.frank@epa.gov](mailto:cardielli.frank@epa.gov)

and

Mr. Richard Rice  
U.S. EPA  
26 W. Martin Luther King Drive  
Attention: FINANCE  
MS: NWD  
Cincinnati, Ohio 45268  
emails: [rice.richard@epa.gov](mailto:rice.richard@epa.gov) and [AcctsReceivable.CINWD@epa.gov](mailto:AcctsReceivable.CINWD@epa.gov)

d. The total amount that Respondent shall pay pursuant to Subparagraph 69(a) shall be deposited in the Ringwood Mines/Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

70. In the event that the payments for Future Response Costs are not made within 60 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in

addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

71. Respondent may contest payment of any Future Response Costs billed under Paragraph 69, if it determines that EPA has made an accounting error, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 45 days of receipt of the bill and must be sent to the EPA RPM. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 45-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 69. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA RPM a copy of the transmittal letter and check or wire transfer confirmation paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 69. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 69. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

## **XVI. DISPUTE RESOLUTION**

72. Unless this Order expressly provides otherwise, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

73. If Respondent objects to any EPA action taken pursuant to this Order, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 15 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

74. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision.

## **XVII. FORCE MAJEURE**

75. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including, but not limited to, their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event: (a) as it is occurring; and (b) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

76. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 2 days of when Respondent first knew that the event might cause a delay. Within 3 days thereafter, Respondent shall provide to EPA in writing: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.



77. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

### **XVIII. STIPULATED PENALTIES**

78. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 79 and 80 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*). “Compliance” by Respondent shall include completion of the activities under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by, and approved under, this Order.

79. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 79b:

<b><u>Penalty Per Violation (Per Day)</u></b>	<b><u>Period of Noncompliance (Days)</u></b>
\$500	1-14
\$1,000	15-30
\$2,000	31 and beyond.

b. Compliance Milestones

Payment of Future Costs – 60 days after receipt of bill and SCORPIOS Report from EPA.

80. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to

submit timely or adequate reports as scheduled in the SOW and identified in Subparagraph 80b:

<b><u>Penalty Per Violation (Per Day)</u></b>	<b><u>Period of Noncompliance (Days)</u></b>
\$1,000	1-14
\$2,000	15-30
\$3,000	31 and beyond.

- b. Progress Reports
  - Remedial Design (RD) Work Plan
  - Preliminary Design Investigation (PDI) Report
  - Preliminary RD Reports (50% completion)
  - Draft Final RD Reports (100% completion)
  - Final RD Reports

81. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 91, Respondent shall be liable for a stipulated penalty in the amount of \$600,000.

82. All penalties shall begin to accrue on the day after the complete performance is due, or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: a) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and b) with respect to a decision by the EPA management official at the Branch Chief level or higher, under Paragraph 74 of Section XVI (Dispute Resolution), during the period, if any, between the date of notice of invocation of dispute resolution and the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

83. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

84. Respondent shall pay EPA all penalties accruing under this Section within 60 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent

invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All penalties accruing under this Section shall be due and payable to EPA within 60 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution). All payments to EPA under this Section shall be made to EPA by check or Electronic Fund Transfer ("EFT") to the Federal Reserve Bank of New York. In order to effectuate an EFT payment, Respondent shall provide the following information to its bank:

EFT to be directed to: **Federal Reserve Bank of New York**

Bank routing number: **021030004**

Bank account number receiving payment: **68010727**

SWIFT address: **FRNYUS33**

Address: **Federal Reserve Bank of New York**

**33 Liberty Street**

**New York, NY 10045**

Field tag 4200 of Fedwire message to read (for Fedwire payments):

**D 68010727 Environmental Protection Agency**

Case number: **II-CERCLA-2014-2025**

Amount of payment: \$

Name of remitter:

Site name: Ringwood Mines/Landfill Superfund Site (OU2 of the Ringwood Mines/Landfill Superfund Site)

Site/Spill identifier: **02-**

In order to effectuate a payment by check, Respondent shall send the check to:

**Address format for U.S. Postal Service:**

U.S. Environmental Protection Agency

P.O. Box 979076

St. Louis, MO 63197-9000

**Address format for common carriers (Fed Ex, DHL, UPS):**

U.S. Environmental Protection Agency

Government Lockbox 979067

1005 Convention Plaza

SL-MO-C2-GL

St. Louis, MO 63101

To ensure proper credit please include the following information on your payment:

- Company/remitter's name (as it appears on EPA document)
- Complete address, including city, state, zip

- Remitter's point of contact person and phone number
- EPA document number (contract, grant, purchase order, etc.)—NOT the remitter's number
- EPA contact name and phone number, if available
- Reason for payment

85. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

86. Penalties shall continue to accrue during any dispute resolution period, however, if the Respondent is liable for penalties pursuant to this Order, penalties need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's final decision.

87. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 82. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 91. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

## **XIX. COVENANT NOT TO SUE BY EPA**

88. In consideration of the actions that Respondent will perform and the payments that Respondent will make under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work performed under this Order and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon Respondent's complete and satisfactory performance of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

## **XX. RESERVATION OF RIGHTS BY EPA**

89. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Order, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

90. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability for costs not included within the definition(s) of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred, or to be incurred, by the Agency for Toxic Substances and Disease Registry related to the Site.

91. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of any or all portion(s) of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs that the United States incurs in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent

shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XXI. COVENANT NOT TO SUE BY RESPONDENT**

92. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Order, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at, or in connection with, the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Future Response Costs.

93. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 90(b), (c), and (e) - (g), but only to the extent that Respondent's claims arises from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

94. These covenants not to sue shall not apply with respect to any claim by Respondent against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the United States' liability as former owner and operator of the Site. The United States and Ford Motor Company entered into a tolling agreement on September 2, 2008 governing the potential cost recovery claims that Ford may have against the United States relating to the Site.

95. Respondent reserves, and this Order is without prejudice to, claims against the United States subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission

occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Respondent's plans or activities. The foregoing applies only to claims that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

96. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

## **XXII. OTHER CLAIMS**

97. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

98. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of, or release from, any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including, but not limited to, any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

99. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## **XXIII. CONTRIBUTION PROTECTION**

100. The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work and Future Response Costs.

101. The Parties agree that this Order constitutes an administrative settlement for purposes of Sections 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which each Respondent, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs.

102. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Order. Each Party expressly reserves any and all rights (including, but not limited to, pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 & 9613) defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto this Order.

#### **XXIV. INDEMNIFICATION**

103. Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including, but not limited to, attorneys fees and other expenses of litigation and settlement, arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into, by, or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

104. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

105. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made, or to be made, to the United States, arising from, or on account of, any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on, or relating to, the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from, or on account of, any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on, or relating to, the Site.

#### **XXV. INSURANCE**

106. At least 15 days prior to commencing any on-Site Work under this Order, Respondent or its contractor shall secure and shall maintain for the duration of this Order comprehensive general liability insurance and automobile insurance with limits of \$3,000,000 million dollars, combined single limit, naming the EPA as an additional insured. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance



policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor.

## **XXVI. FINANCIAL ASSURANCE**

107. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$2,000,000 in one or more of the following forms, to secure the full and final completion of Work by Respondent:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
- e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a substantial business relationship with Respondent; including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
- f. a corporate guarantee to perform the Work by Respondent, including a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

108. If Respondent seeks to provide a demonstration under 40 C.F.R. § 264.143(f) and has provided a similar demonstration at other RCRA or CERCLA Sites, the amount for which it is providing financial assurance at those Sites shall be added to the estimated costs of the Work for this Paragraph.

109. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 107, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order

110. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 107(e) or 107(f) of this Order, Respondent shall: (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Order, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current cost estimate of \$2,000,000 for the Work at the Site shall be used in relevant financial test calculations.

111. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 107 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may change the form of financial assurance required hereunder only in accordance with a final decision resolving such dispute pursuant to Section XVI (Dispute Resolution).

112. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of financial assurance required hereunder only in accordance with a final decision resolving such dispute pursuant to Section XVI (Dispute Resolution).

## **XXVII. INTEGRATION/APPENDICES**

113. This Order and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Order and become incorporated into, and enforceable under, this Order constitute the final,

complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Order.

114. In the event of a conflict between any provision of this Order and the provisions of any document attached to this Order or submitted or approved pursuant to this Order, the provisions of this Order shall control.

115. The following documents are attached to and incorporated into this Order:

“Appendix A” is the SOW.

“Appendix B” is the OU2 ROD.

“Appendix C is the map of the Ringwood Mines/Landfill Superfund Site

#### **XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

116. This Order shall be effective on the date it is signed by the Regional Administrator or his/her designee.

117. This Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA RPM do not have the authority to sign amendments to the Order.

118. No informal advice, guidance, suggestion, or comment by the EPA RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

#### **XXIX. NOTICE OF COMPLETION OF WORK**

119. When EPA determines, after EPA’s review of the Final Report, that all Work has been fully performed in accordance with the other requirements of this Order, with the exception of any continuing obligations required by this Order, including payment of Future Response Costs or record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Remedial Design Work Plan (RD Work Plan) if appropriate to correct such deficiencies. Respondent shall implement the modified and approved RD Work Plan and shall submit the required deliverables. Failure by

Respondent to implement the approved modified RD Work Plan shall be a violation of this Order.

**IN THE MATTER OF: Ringwood Mines/Landfill Superfund Site, Borough of Ringwood,  
Passaic County, New Jersey - CERCLA Docket No. 02-  
2014-2025**

Agreed this \_\_\_\_ day of \_\_\_\_\_, 2014.

For FORD MOTOR COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

**IN THE MATTER OF: Ringwood Mines/Landfill Superfund Site, Borough of Ringwood,  
Passaic County, New Jersey - CERCLA Docket No. 02-2014-2025**

It is so ORDERED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

BY: \_\_\_\_\_  
Walter E. Mugdan, Director  
Emergency and Remedial Response Division  
Region 2  
United States Environmental Protection Agency